

Forest Service, USDA

§215.4

Lead appellant—For appeals submitted with multiple names, or having multiple organizations listed, the appellant identified to represent all other appellants for the purposes of communication, written or otherwise, regarding the appeal. The use of the generic term “appellant” applies to lead appellant also.

Name—The first and last name of an individual or the name of an organization. An electronic username is insufficient for identification of an individual or organization.

National Forest System land—All lands, waters or interests therein administered by the Forest Service (§251.51).

Newspaper(s) of record—Those principal newspapers of general circulation annually identified in a list and published in the FEDERAL REGISTER by each Regional Forester to be used for publishing notices of projects and activities implementing land and resource management plans.

Projects and activities implementing a land and resource management plan—Site-specific projects and activities, including those for research, on National Forest System lands that are approved in a Decision Notice (DN) or Record of Decision (ROD) by a Forest Service official.

Proposed action—A proposal made by the Forest Service that is a project or activity implementing a land and resource management plan on National Forest System lands and is subject to the notice and comment provisions of this part.

Record of Decision (ROD)—A document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).

Responsible Official—The Forest Service employee who has the delegated authority to make and implement a decision subject to this part.

Substantive comments—Comments that are within the scope of the proposed action, are specific to the proposed action, have a direct relationship to the proposed action and include supporting reasons for the Responsible Official to consider.

Transmittal letter—The Responsible Official’s letter transmitting the decision documentation. The letter shall include only an index of the transmitted documents and identification of those portions of the record that relate to the issues raised.

§215.3 Proposed actions subject to legal notice and opportunity to comment.

The legal notice (§215.5) and opportunity to comment procedures (§215.6) apply only to:

(a) Proposed projects and activities implementing land management plans (§215.2) for which an environmental assessment (EA) is prepared, except hazardous fuel reduction projects conducted under provisions of the Healthy Forests Restoration Act (HFRA), as set out at part 218, subpart A, of this title.

(b) Proposed projects and activities described in a draft environmental impact statement (DEIS) for which notice and comment procedures are governed by 40 CFR parts 1500 through 1508, except hazardous fuel reduction projects conducted under provisions of the HFRA, as set out at part 218, subpart A, of this title.

(c) Proposed non-significant amendments to a land and resource management plan (pursuant to the 1982 planning regulations) that are included as part of a decision on a proposed action for which an EA is prepared;

(d) A proposed action resulting in a revision of an EA based on consideration of new information or changed circumstances (FSH 1909.15, Chapter 10, section 18) as provided for in §215.18(b)(1); and

(e) Proposed research activities to be conducted on National Forest System lands.

[68 FR 33595, June 4, 2003, as amended at 69 FR 1533, Jan. 9, 2004; 73 FR 53712, Sept. 17, 2008]

§215.4 Actions not subject to legal notice and opportunity to comment.

The procedures for legal notice (§215.5) and opportunity to comment (§215.6) do not apply to:

(a) Projects and activities which are categorically excluded from documentation in an environmental impact

§215.5

36 CFR Ch. II (7–1–12 Edition)

statement (EIS) or environmental assessment (EA) pursuant to FSH 1909.15, Chapter 30, section 31;

(b) Proposed amendments to, revision of, or adoption of land and resource management plans that are made separately from any proposed actions, and which are therefore subject to either the objection process of §219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (*see* 36 CFR parts 200 to 299, Revised as of July 1, 2000);

(c) Projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500–1508 and the National Forest Management Act and the implementing regulations at 36 CFR part 219;

(d) Determinations by the Responsible Official, after consideration of new information or changed circumstances, that a revision of the EA is not required (1909.15, Chapter 10, section 18); and

(e) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures issued in the Forest Service Manual and Handbooks (part 216).

(f) Hazardous fuel reduction projects conducted under the provisions of section 105 of the HFRA, except as provided in part 218, subpart A, of this title.

[68 FR 33595, June 4, 2003, as amended at 69 FR 1533, Jan. 9, 2004]

§215.5 Legal notice of proposed actions.

(a) *Responsible Official.* The Responsible Official shall:

(1) Provide notice of the opportunity to comment on a proposed action implementing the land and resource management plan.

(2) Determine the most effective timing for publishing the legal notice of the proposed action and opportunity to comment.

(3) Promptly mail notice about the proposed action to any individual or organization who has requested it and to those who have participated in project planning.

(4) Publish a legal notice of the opportunity to comment on a proposed

action as provided for in paragraph (b)(2).

(5) Accept all written and oral comments on the proposed action as provided for in §215.6(a)(4).

(6) Identify all substantive comments.

(b) *Legal notice of proposed action*—(1) *Content of legal notice.* All legal notices shall include the following:

(i) The title and brief description of the proposed action.

(ii) A general description of the proposed action's location with sufficient information to allow the interested public to identify the location.

(iii) A statement that the Responsible Official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the project or activity as provided for in §215.10, when applicable.

(iv) For a proposed action to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (§215.6(a)(2)); legal notices shall not contain the specific date since newspaper publication dates may vary.

(v) For a proposed action that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends 45 days following the date of publication of the notice of availability (NOA) in the FEDERAL REGISTER (§215.6(a)(2)). The legal notice must be published after the NOA and contain the NOA publication date.

(vi) A statement that only those who submit timely and substantive comments will be accepted as appellants.

(vii) The Responsible Official's name, title, telephone number, and addresses (street, postal, facsimile, and e-mail) to whom comments are to be submitted and the Responsible Official's office business hours for those submitting hand-delivered comments (§215.6(a)(4)(ii)).

(viii) A statement indicating that for appeal eligibility each individual or representative from each organization submitting substantive comments